IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1172 OF 2006

Indravadan Vrajlal Shah & Anr. ...Petitioners

vs.

State of Maharashtra & Ors. ...Respondents

Mr. H.N.Thakore with Ms Agnes Baradia i/b M/s.Thakore
Jariwala & Associates for the Petitioners
Mr.A.S.Shitole,A.P.P. for Respondent No.1-State
Mr.Dinkar Dwivedi for Respondent Nos.2 and 3.

CORAM: A.S.OKA,J.
DATE : AUGUST 25, 2006.

P.C.:

1. Rule. The Advocates appearing for Respondents waive service. Taken up for hearing forthwith.

2. The second and third Respondent have filed a complaint under section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the said Act of 1881). The process was issued on the said complaint by the learned Magistrate. A Revision Application was filed by the present Petitioners who are accused persons in the said complaint for challenging the order issuing process. The Revision Application has been rejected by the learned Additional Sessions Judge by order dated 16th January 2006. The main contention of the Petitioners in this Petition is that the Revision Application has been decided by a cryptic order and without considering the submissions which were made before the said Court.

3. After having heard the Advocates appearing for the parties, I find that the Revision Application preferred by the Petitioners has been decided by a very cryptic order. When the order issuing process was challenged by the Petitioners by filing a Revision Application, the minimum which was expected was that the averments made in the complaint will be considered with a view to find out whether prima facie case of commission of an offence under the said Act of 1881 was made out. However, that exercise has not been done by the learned Judge. As is apparent from the order, merits of the case of the Petitioners have not been considered. The Revision Application has been decided by passing a cryptic order. In the circumstances, Revision Application will have to be heard afresh.

4. Hence, I pass the following order :

i) Impugned Order dated 16th January 2006 is quashed and set aside. Criminal Revision Application No.1358 of 2005 is restored to file.

ii) Parties are directed to appear before the learned Sessions Judge, Mumbai on 18th September 2006 at 11.00 a.m. The learned Sessions Judge will either hear the Revision Application himself or will assign it to any other learned Judge.

iii) The Revision Application shall be decided on its own merits as expeditiously as possible and preferably on or before end of January 2007.

iv) Proceedings of the complaint filed by the second and third Respondent will remain stayed till the final disposal of the Revision Application.

v) Rule is made partly absolute in above terms. No order as to costs.

vi) Parties and the concerned Court to act upon an authenticated copy of this order.

JUDGE